

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

DUBLIN DIVISION

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

2015 FEB 18 PM 3:22

CLERK J. *[Signature]*
SOL DIST. OF GA.

DUNCAN STONE,)
Plaintiff,)
v.) CV 312-091
SHARON LEWIS, Medical Director,)
Georgia Department of Corrections,)
Defendant.)

ORDER

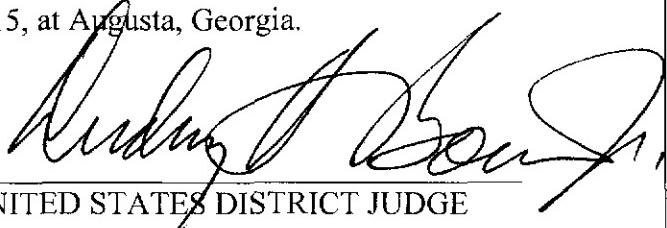
After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed (doc. no. 74). The Magistrate Judge recommended granting summary judgment to Defendant Lewis because the undisputed facts in this case show she was not subjectively aware of any serious risk of harm to Plaintiff, one of the necessary prongs of a deliberate indifference claim, and the facts show Defendant Lewis had no supervisory responsibility for Plaintiff's dental care.

Plaintiff does not point to specific portions of the recommendation in which he finds error, but he instead argues about the Americans with Disabilities Act, a statute which has no bearing on his Eighth Amendment deliberate indifference claim that the Court allowed to proceed when screening the case at its inception. (See doc. no. 17.) Moreover, Plaintiff's belated allegations of discovery abuses by the defense ring hollow because the record does not reflect he ever filed a proper motion to compel, despite receiving specific instructions on how to do so on more than one occasion. (See id. at 8; doc. no. 36, pp. 1-2.)

In any event, the record shows the defense did provide information that Plaintiff claims he did not have. For instance, Plaintiff claims he did not know Cynthia Ditslear served as the Georgia Department of Corrections Dental Director until the Magistrate Judge disclosed the information in his Report and Recommendation. (Doc. no. 74, pp. 2, 4.) However, Exhibit 1 to Plaintiff's deposition, taken on June 16, 2014, is a Grievance Appeal Response that determined "dental personnel handled this case appropriately by placing your name on the denture list." The appeal response is dated March 25, 2013, and signed by "Cynthia Ditslear, DDS, GDC Dental Director." (See doc. no. 58-5, Pl.'s Dep., Ex. 1.) Although the appeal response post-dates Plaintiff's commencement of this lawsuit in September 2012, it pre-dates the summary judgment briefing of Defendant Lewis by well over a year. Although Plaintiff claimed to have never received the response, it was shown to him at his deposition that occurred before the close of the discovery period. (Pl.'s Dep., pp. 20, 33.)

Accordingly, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion. The Court **GRANTS** the motion for summary judgment (doc. no. 58), **DIRECTS** the Clerk to **ENTER** final judgment in favor of Defendant Lewis, and **CLOSES** this civil action.

SO ORDERED this 18th day of February, 2015, at Augusta, Georgia.



UNITED STATES DISTRICT JUDGE